



PredPol Predictive Policing SaaS Subscription Agreement

This Subscription Agreement ("**Agreement**") between PredPol, Inc., a California corporation, with offices at 101 Cooper Street, Santa Cruz, CA 95060 ("**PredPol**") and El Monte Police Department. ("**Customer**"). This Agreement is effective when signed by both parties (the "**Effective Date**"). This Agreement governs Customer's access to and use of the Services.

1. Product and Payment.

Product. In consideration of the pricing and other obligations described herein, Customer shall receive PredPol Services that are focused on crime predictions by shift, day and location, including, but not necessarily related to, property damage, assault, and robbery.

Customer shall receive PredPol Services for the period set forth in applicable Statement of Work, executed by the parties and attached hereto. The annual subscription fees that Customer agrees to pay for PredPol Services, as well as any one-time installation fees, are as described in the applicable Statement of Work.

- A) **Payment*** The first payment is due thirty days after this agreement is executed. Fees for orders where PredPol issues an invoice are due upon Customer's receipt of the invoice and are considered delinquent thirty days after the date of the applicable invoice. Payments shall be made in U.S. Dollars by either wire transfer or check.
- B) **Commencement of Services.*** Services will commence subsequent to receipt of the year one payment and Customer taking the necessary steps to enable PredPol to setup the Services.
- C) **Invoices.*** Each year PredPol shall furnish to Customer an original invoice for all work to be performed in a coming contract year. The first invoice shall be issuable upon full execution of this Agreement. Customer will make all required payments to PredPol within thirty (30) days of receipt of PredPol's invoice.
- D) **Delinquent Payments.*** Delinquent payments shall bear interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by PredPol in collecting such delinquent amounts except where such delinquent amounts are due to PredPol's billing inaccuracies.

2. Term

- A) **Agreement Term.*** This Agreement will remain in effect for the Term laid out in the applicable Statement of Work.

3. Services.



- A) *License to Use.* Customer shall be licensed and authorized to use the Services as provided as a SaaS. The license is non-transferable, non-assignable and non-exclusive.
- B) *Facilities and Data Transfer.* Facilities used to store and process Customer data will adhere to security standards no less protective than the standards used for PredPol's own information and shall be compliant with applicable laws.
- C) *Modifications to the Services.* PredPol may make commercially reasonable changes to the Services. If PredPol materially changes the Services, PredPol will inform Customer.
- D) *Retention.* PredPol will have no obligation to retain archived Customer data.

4. **Additional Customer Obligations.**

Customer agrees to provide the information and take the steps requested by PredPol to facilitate setup and implementation of the Services.

- A) *License to Use Customer Data.* The Customer grants PredPol an irrevocable, non-exclusive license to use its data for purposes of research, development and testing of PredPol's services. Customer authorizes PredPol to use its data for delivering services to Customer and other law enforcement agencies.
- B) *Additional Obligations.* The Customer also agrees to: a) Support testing of new features/tools; b) Contribute to requested case studies; c) Provide user feedback, and allow PredPol to identify customer as a PredPol client in marketing material.
- C) *Compliance.* Customer will use the Services in accordance with this Agreement, the applicable Statement of Work and all applicable laws.
- D) *Login IDs and Passwords:* Customer is solely responsible for monitoring and protecting the confidentiality of all Login IDs and Passwords issued to it and its End Users.
- E) *Customer Administration of the Services.* Customer may specify one or more Administrators with the rights to administer the End User Accounts. Customer is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating individuals authorized to access the Admin Account(s); and (c) ensuring activities that occur in connection with the Admin Account(s) comply with this Agreement. Customer agrees that PredPol's responsibilities do not extend to Customer's internal management or administration of the Services.
- F) *Unauthorized Use.* Customer will use commercially reasonable efforts to prevent unauthorized use of the Services and to terminate any unauthorized use. Customer will promptly notify PredPol of any unauthorized use of or access to the Services of which it becomes aware.
- G) *Restrictions on Use.* Unless PredPol specifically agrees in writing, Customer will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell,



resell, lease or the functional equivalent, the Services to a third party; (b) attempt to reverse engineer the Services or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Services. Customer is solely responsible for ensuring that its use of the Services complies with all applicable laws and regulations.

- H) Third Party Requests.* Customer is responsible for responding to Third Party Requests. PredPol will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify Customer of its receipt of a Third Party Request; (b) comply with Customer's reasonable requests regarding Customer's efforts to respond to a Third Party Request; and (c) provide Customer with the information or tools required for Customer to respond to the Third Party Request. Customer will first seek to obtain the information required to respond to the Third Party Request on its own and will contact PredPol only if it cannot reasonably obtain such information.

5. Technical Support Services.

- A) By Customer.* Customer will, at its own expense, respond to questions and complaints from End Users or third parties. Customer will use commercially reasonable efforts to resolve support issues before escalating them to PredPol.
- B) By PredPol.* PredPol will provide the support necessary to resolve Customer's issue, to the extent reasonably practicable in PredPol's ~~discretion~~ and in accordance with PredPol's standard Support & Maintenance Program, a copy of which is attached hereto.

6. Suspension Of End User Accounts by PredPol.

If PredPol becomes aware of an End User's violation of the Agreement, PredPol may request that Customer suspend the applicable End User Account. If Customer fails to comply with PredPol's request, PredPol may suspend the End User Account. The suspension will continue until the applicable End User has cured the breach.

- A) Emergency Security Issues.* If there is an emergency security issue (determined solely in PredPol's reasonable business judgment), PredPol may automatically suspend the offending use. Suspension will be to the extent and duration required to prevent or terminate the emergency security issue. If PredPol suspends an End User Account without prior notice to Customer, at Customer's request, PredPol will provide Customer the reason for the suspension.

7. Confidential Information.

- A) Obligations.* Each party will: (a) protect the other party's confidential information with the same standard of care it uses to protect its own; and (b) not disclose confidential information except to affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Confidential information may only be used to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for the actions of its affiliates' employees.



- B) Required Disclosure.* Each party may disclose the other party's confidential information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

8. Intellectual Property Rights; Brand Features.

- A) Intellectual Property Rights.* Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content, brand features or intellectual property. Customer grants to PredPol a non-exclusive license to use Customer's Data for PredPol's legitimate business purposes, including providing products and services to law enforcement agencies.

9. Disclaimers.

- A) Disclaimers.* TO THE EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN; (i). PREDPOL MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES; AND (ii) THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, QUIET ENJOYMENT, ACCURACY OF DATA, SYSTEM INTEGRATION, COURSE OF PERFORMANCE AND FITNESS FOR A PARTICULAR PURPOSE. PREDPOL AND ITS SUPPLIERS DO NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS INCLUDING EMERGENCY SERVICES CALLS OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

- B) Warranty.* PredPol warrants and represents that its predictive tool integrates with - Customer's RMS/CAD systems to provide real-time predictions to Customer's police department. PredPol warrants all work performed or services rendered under the Agreement to be of good quality and free from any defective or faulty material and workmanship.

10. Termination.

- A) Termination for Breach.* Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or is subject to insolvency proceedings that are not dismissed within 45 days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.



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- B) Effects of Termination.** If this Agreement terminates, upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party.

11. Indemnification.

- A) By Customer.** Customer will indemnify, defend, and hold harmless PredPol from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim: (i) regarding Customer Data; or (ii) regarding Customer's use of the Services in violation of this Agreement or applicable law.
- B) By PredPol.** PredPol will defend and hold harmless Customer against any third party claim that the Services infringe or misappropriate the intellectual property of a third party ("Infringement Claim"), and indemnify Customer from all resulting costs and damages actually awarded against Customer to the third party making such Infringement Claim by a court of competent jurisdiction or agreed to in settlement. PredPol will have no obligations or liability under this Section arising from: (i) use of any Services or PredPol Brand Features in a modified form or in combination with materials not furnished by PredPol, and (ii) any content, information or data provided by Customer, End Users or other third parties.
- C) General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; (c) the other party reasonably cooperates with requests for assistance; and (b) the other party may join in the defense with its own counsel at its own expense.

12. Possible Infringement.

- A) Repair, Replace, or Modify.** If PredPol reasonably believes the Services infringe a third party's Intellectual Property Rights, then PredPol will: (a) obtain the right for Customer, at PredPol's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.
- B) Suspension or Termination.** If PredPol does not believe the foregoing options are commercially reasonable, then PredPol may suspend or terminate Customer's use of the impacted Services. If PredPol terminates the impacted Services, then PredPol will provide a pro-rata refund of the unearned Fees.

13. Limitation of Liability.



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A) Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

B) Exceptions to Limitations. These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations.

14. Miscellaneous.

A) Notices. Unless specified otherwise herein, (a) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.

B) Change of Control. Upon a change of control (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) the other party may terminate this Agreement any time between the change of control and thirty days after it receives the notice.

C) Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war, riot, labor condition, governmental action, and Internet disturbance) beyond the party's reasonable control; provided, that obligations that are purely financial in nature shall not be subject to this provision

D) No Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver.

E) Severability. If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.

F) No Agency. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

G) Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

H) Governing Law. This Agreement is governed by California law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND



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THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CRUZ COUNTY, CALIFORNIA. The parties explicitly agree that no other laws, treaties or regulations shall control this Agreement.

- I) **Amendments.** Any amendment must be in writing and expressly state that it is amending this Agreement.
 - J) **Survival.** The following sections will survive expiration or termination of this Agreement: Section 3, 6, 7.1, 10, 11.2, 12, 13, 14 and 15.
 - K) **Entire Agreement.** This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.
 - L) **Interpretation of Conflicting Terms.** If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Subscription Terms set forth in any separate quote prepared by PredPol, then the Addendum to the Agreement, and the terms located at any URL. If Customer signs a physical agreement with PredPol to receive the Services, the physical agreement will override any online Agreement.
 - M) **Counterparts.** The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.
15. **Definitions.** (for terms that may appear either in this Agreement or in an attachment hereto)
- A) "**Admin Account(s)**" means the administrative account(s) provided to Customer by PredPol for the purpose of administering the Services. The use of the Admin Account(s) requires a password, which PredPol will provide to Customer.
 - B) "**Administrators**" mean the Customer-designated technical personnel who administer the Services to End Users on Customer's behalf.
 - C) "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.
 - D) "**Confidential Information**" means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is Customer's Confidential Information. Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.



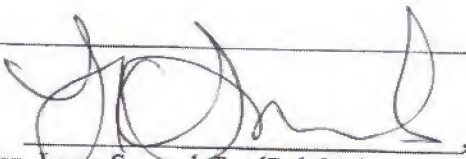
- E) "Customer Data" means data, including crime data, provided, generated, transmitted or displayed via the Services by Customer or End Users.
- F) "Emergency Security Issue" means either: (a) Customer's use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other customer's use of the Services; or (iii) the PredPol network or servers used to provide the Services; or (b) unauthorized third party access to the Services.
- G) "End Users" means the individuals Customer permits to use the Services.
- H) "End User Account" means a PredPol-hosted account established by Customer through the Services for an End User.
- I) "Fees" means the amounts invoiced to Customer by PredPol for the Services as described in an applicable Statement of Work.
- J) "Initial Services Term" means the term for the applicable Services beginning on the Service Commencement Date and continuing for 12 months (or, if different, the duration set forth on the Order Page).
- K) "Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.
- L) "Subscription Terms" means the order document reflecting the financial terms of the subscription, including: (i) the Services being ordered; (ii) Fees; and (iii) Initial Services Term.
- M) "Service Commencement Date" is the date upon which PredPol makes the Services available to Customer, and will be within one week of PredPol's receipt of the completed Statement of Work, unless otherwise agreed by the parties.
- N) "Services" means the applicable PredPol product or service, as described in the attached Product Data Sheet or applicable Statement of Work.
- O) "Services Term" means the applicable Initial Services Term and all renewal terms for the applicable Services.
- P) "Statement of Work" means one or more fully-executed statements containing the terms and conditions for the provision of Services to or for the benefit of a specific Customer.
- Q) "Suspend" means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.
- R) "Term" means the term of the Agreement, which will begin on the Effective Date and continue until the earlier of (i) the end of the last Services Term or (ii) the Agreement (or Statement of Work) is terminated as set forth herein.



EXECUTED as a sealed instrument as of the day and year first set forth below by the last counter-signatory.


Representations and Warranties. Each party represents that it has full power and authority to enter into the Agreement. If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use of the Services.

DATED: 4/24, 2014 PredPol, Inc.:


By: Larry Samuel, PredPol CEO

DATED: 4.15 2014, 2014 City of El Monte:


By: Raul Godinez II, City Manager
City of El Monte, California

APPROVED AS TO FORM

Richard E. Podillo
Asst. City Atty.